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ATTORNEY GENERAL

Department of Justice

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Tom Newton, Director, State Registrar
Jill France, Deputy State Registrar
Iowa Department of Public Health
Lucas State Office Building
Des Moines, IA 50309
LOCAL

Dear Director Newton and Deputy Registrar France:

You have asked our office to address whether marriage applications filed with county recorders are public records available for examination and inspection under Iowa Code chapter 22. Pursuant to your statutory duties in Iowa Code section 144.5, you would like to provide direction to all county recorders regarding this issue in light of the public records requests which have arisen following the *Varnum v. Brien* Supreme Court decision. For the following reasons, we conclude that marriage applications are open records available for public examination and inspection upon the filing of the document with the county recorder.

Background: Marriage Records

Iowa law defines marriage as a civil contract entered into between two consenting persons. Iowa Code chp. 595. The legal requirements governing the marriage process are found in two separate chapters of the Iowa Code -- chapters 144 and 595 -- and additional laws impacting the public records questions are set forth in chapters 22 and 331.

In accordance with this statutory framework, there are three records of import with respect to the marriage process. First, couples desiring to enter into this civil contract are required to submit an "Application to Marry in Iowa" (the "marriage application") to the county registrar¹ in the county in which the license is to be issued. Iowa Code § 595.4. Second, the couple must then obtain a "License to Marry in Iowa" (the "marriage license")

¹ In Iowa, the county recorder is the county registrar. Iowa Code §§ 144.9, 331.611.

from the county registrar. Iowa Code § 595.3. Third, the couple must also obtain a "Certificate of Marriage" (the "marriage certificate") from the county registrar. Iowa Code §§ 144.36, 595.13.

Following solemnization of the marriage, the marriage certificate must be returned by the officiant within fifteen days to the county registrar who issued the marriage license. Iowa Code §§ 144.36, 595.13. The marriage certificate is then recorded by the county registrar and submitted to the state registrar who files the record. Iowa Code § 144.36.

The Iowa Department of Public Health, Bureau of Health Statistics ("Department") registers all marriage certificates received from Iowa counties as part of its duty to maintain and operate a uniform system for registering vital statistics. Iowa Code § 144.2. The Department does not receive or maintain the marriage application at any point in this process: the county remains at all times the sole custodian of that record.

Marriage Application is a Public Record Available for Inspection at the County Level

The marriage application is clearly a "public record" governed by Iowa's Open Records Law. (Iowa Code § 22.1(3) ("public record" includes all records and documents "of or belonging to" the state or county). There is a presumption of openness and disclosure under chapter 22, and the right of the public to "view public records is to be interpreted liberally to provide broad public access to public records." *Rathmann v. Bd. of Directors of Davenport Comm. School District*, 580 N.W.2d 773, 777 (Iowa 1998). Under Iowa's Open Records Law, a public record is open for examination by the public unless a specific provision of law requires or allows the lawful custodian to keep it confidential. Iowa Code § 22.2. None of the laws which govern marriage applications require or allow counties to deny inspection of the applications, and indeed all favor openness of the record:

Iowa Code chapter 595. This chapter requires parties desiring a marriage license to sign and file a verified marriage application with the county registrar. Iowa Code § 595.4. This section further provides that upon receipt of the application from the parties the county registrar "shall file the application in a record kept for that purpose and shall take all necessary steps to ensure the confidentiality of the social security number of each applicant." Iowa Code § 595.4. There is no provision in this chapter which authorizes counties to deny public access to the entire marriage application. To the contrary, the express direction to the counties to protect the social security number of applicants implies that the application is otherwise public and open for inspection. Indeed, there would have been no need for the legislature to expressly protect the confidentiality

of one item on the application if the entire application was confidential. The inclusion of the direction to counties to protect as confidential the social security numbers of the applicants supports a construction of this statute that the application is otherwise open to public inspection. *See State v. Public Employment Relations Bd.*, 744 N.W.2d 357, 361 (Iowa 2008) (a statute should not be construed so as to render any part of it superfluous).

In addition, two other provisions of chapter 595 support the proposition that the marriage application is open to the public at the time of its filing with the recorder. First, the chapter includes a provision for sealing marriage application records which refer to the pregnancy of a minor applicant. Iowa Code § 595.2(4). The inclusion by the legislature of a requirement to specifically protect as confidential certain information in the marriage application process reflects an intent that the remainder of the marriage application documents are open. Second, marriage application records often contain court orders waiving the three-day waiting period. Iowa Code § 595.4. There are very limited circumstances under which a court order would ever be confidential, and the fact that a marriage application record may include a court order of this nature is further support for treating the entire record (with the exception of social security numbers) as open.

Iowa Code chapter 144. Iowa law provides that “the following vital statistics records may be inspected and copied as of right under chapter 22 when they are in the custody of a county registrar: a record of marriage.” Iowa Code §144.43; *see also* Iowa Code §144.11; 641 IAC 96.6. A record of marriage includes “the compilation of those entries contained in the docket books reflecting the recording of the marriage event, including the certificate of marriage but excluding all entries indicating “confidential information, for statistical purposes only, or otherwise indicated as confidential or statistical in nature on the face of the record.” 641 IAC 96.1. Taken together, these laws clearly indicate that the “Application of Marriage” and the “Certificate of Marriage” are public documents available for inspection and copying at the county level once the marriage certificate is filed by the county registrar. Whether there is a “record of marriage” under the statute for inspection prior to the filing of the certificate is arguable but irrelevant: even if no “record of marriage” exists prior to the filing of the marriage certificate, there is no express language in this chapter which authorizes a county to retain the marriage application as confidential.

Iowa Code chapter 331. Under chapter 331, the county recorder is required to maintain a record of each fee and charge collected by that office. Recorders collect \$35 at the time an application to marry is filed, and an additional \$5 for an application to waive the three-day waiting period. Iowa Code §§ 331.605(7); 595.4. Clearly, the recorder’s record of fees paid and the purpose for the fee is a public record. Iowa Code section 331.902(2) provides:

Each elective officer specified in subsection 1 [including the county recorder] shall maintain a record in the county system of each fee and charge collected. The record shall show the date, amount, payor, and type of service, and, when the fee is for recording an instrument, the names of the parties to the instrument. The record of the fees collected shall be retained for three years after audit of the county pursuant to section 11.6.

This fee record -- which shows the amount paid, who paid it, and the service received -- is public. While that information alone would not disclose all of the data on an application to marry, it would provide sufficient information to show that a specific individual paid a fee to the recorder for an application to marry. The marriage application fee is charged, paid, and publicly recorded regardless of whether the parties actually marry and prior to a "record of marriage" being filed with the county and state. It would make little sense for the marriage application to be confidential but the record that a party paid a fee to file the marriage application be open.

Iowa Code chapter 22. Chapter 22 includes 61 separate provisions authorizing specific records to be maintained as confidential -- none of which provide for the confidentiality of marriage applications. One county has asked whether Iowa Code section 22.7(18) might authorize counties to maintain marriage applications as confidential. Subsection 18 protects statements made to a governmental body from persons outside government if such governmental body reasonably believes that the person would be discouraged from providing the statements if they were available for general public examination. This section is inapplicable because it protects only those communications which are not required by law, and submission of a marriage application clearly is required by law. Iowa Code § 595.4. In addition, marriage applicants have notice that the application and certificate are public. The State of Iowa Marriage Instructions inform the applicants that the marriage application is a public document, providing as follows: "The Certificate of Marriage and the Application to Marry in Iowa are public records available for inspection at the county level per Iowa Code section 144.43. However, your social security number is maintained as confidential and will not be released to the public."

Summary. In sum, there is no provision in Chapter 595 or elsewhere in Iowa law which authorizes counties to treat the entire marriage application as confidential. In the absence of express authority to retain the marriage application as a confidential record, it is an open record subject to inspection once the parties file the application with the county. Counties should redact the social security number of applicants and provide the marriage application for public inspection upon request.

Limitations on Copying. Lastly, we would note that while the public does have the right to inspect marriage applications and marriage certificates, there are limits on the ability of the public to receive certified copies of such records. Iowa Code § 144.45; 641 IAC 96.7, 641 IAC 103.1(1); Op.Att'yGen. 98-8-1(L) (concluding that section 144.45, not Iowa Code chapter 22, "governs the issuance of certified copies of vital statistics records and that an applicant must be 'entitled to a record' in order to obtain a certified copy thereof.").

Sincerely,

A handwritten signature in black ink, appearing to read "Heather L. Adams", with a stylized, flowing script.

HEATHER L. ADAMS
Assistant Attorney General